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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
RAJAN, KAI	

ART UNIT	PAPER NUMBER
3769	

NOTIFICATION DATE	DELIVERY MODE
11/27/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@mwzb.com

Office Action Summary	Application No.	Applicant(s)	
	10/518,433	SCHULTE ET AL.	
	Examiner	Art Unit	
	Kai Rajan	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 July 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1, 9 – 11, 14 – 18, and 21 – 23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 9 – 11, 14 – 18, and 21 – 23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Examiner acknowledges the reply filed July 16, 2009.

Election/Restrictions

Newly submitted claims 22 and 23 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: In particular, claims 22 and 23 disclose an embodiment of the invention which is not connected to a practice management system, supported by page 7 of the original specification. However, in light of previously claimed limitations, it appears that Applicant has previously elected an embodiment that is connected to a "practice management system" by original presentation. The previously presented claims comprised centralized storage devices that store patient data, and are accessible to multiple users. It is the Examiner's position that in light of the specification's disclosure, this constitutes a networked system.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22 and 23 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 11 is rejected under 35 U.S.C. 101 because a claim to software, program, instructions, code, data structure, or a signal that does not recite a tangible computer readable medium or a processor is non-statutory subject matter (see item "f"). See MPEP 2106 IV B 1 (a). It has been determined that a "computer program" is not sufficiently tangible.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the term "practice management system" renders the claim indefinite, since one of ordinary skill in the art at the time the invention was made would be unable to ascertain the metes and bounds of the functions and meaning of a "practice management system." The term is not defined by the claim and the specification does not provide a definition or description of "practice management system."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 9 – 11, 14 – 18, and 21 – 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skardon U.S. Patent No. 6,288,646, in view of Fey et al. U.S. PGPub No. 2002/0038227, hereinafter Fey, further in view of Iliff U.S. Patent No. 6,113,540.

Skardon discloses a method for recording and analyzing syndromes of allergic diseases and their causes and for establishing appropriate therapy proposals comprising:

a) preparing at least one set of anamnesis questions, wherein the anamnesis questions include questions relating to the time and/or cause of the occurrence, the severity of, symptoms of an allergic disease and the environmental exposure of a patient, and storing this set in a data memory in a computer-readable media (Column 9 lines 13 – 22, column 10 lines 9 – 17, column 11 lines 1 – 24 disclose registering patients and collecting patient data including medical history data of allergens and allergen trigger thresholds),

b) preparing a set of data relating to the causes of diseases, including a listing of allergens, and storing this set in a data memory in a computer-readable media, wherein the data is continuously revised and extended (Column 3 lines 65 – 67, column 4 lines 1 – 29 disclose

receiving and storing updated air quality and asthma related information including pollen counts and weather reports.),

c) providing a computer program which selects and presents anamnesis questions according to a predetermined set of rules (Column 9 lines 13 – 22, column 10 lines 9 – 17, column 11 lines 1 – 24 disclose registering patients and collecting patient data including medical history data of allergens and allergen trigger thresholds. If a patient is not currently registered, they are prompted to register. See also figure 7),

d) recording the answers to the anamnesis questions in a computer-readable media, wherein within the framework of the anamnesis questions preliminary information is recorded which includes at least the age and gender of a patient and optionally one or more principal allergic symptoms, affected organs and/or other diagnosed illnesses, and wherein the answers are at least partly predetermined in discrete selection steps (Column 9 lines 13 – 22, column 10 lines 9 – 17, column 11 lines 1 – 24 disclose collecting patient data including medical history data of allergens and allergen trigger thresholds and data characteristic of the patient such as age. It is well known that age and gender are patient data commonly collected for patient profiles),

h) preparing one or more diagnosis proposals (Column 11 lines 25 – 50 discloses providing feedback and advice including warnings to a patient based on the stored medical history or allergen trigger thresholds, and the received weather or air quality reports for the area in which the patient is located),

i) preparing one or more therapy proposals, wherein steps e) to i) proceed automatically under the control of an interactive computer program, which outputs or displays the questions, diagnoses and/or proposals (Column 11 lines 25 – 50 discloses providing feedback and advice

including warnings to a patient based on the stored medical history or allergen trigger thresholds, and the received weather or air quality reports for the area in which the patient is located),

j) preparing test proposals to further narrow the diagnosis proposals and therapy proposals (Column 11 lines 36 – 50 advice and feedback is dynamically updated as the determined location and received data changes, therefore changing the diagnosis proposals and feedback given to the patient),

k) providing a storage device in which all the data recorded from patients is supplied (Column 4 lines 58 – 67, column 5 lines 1 – 10 discloses a patient client database with medical data for the stored patients), and

Skardon discloses a patient client database that stores data for multiple patients (Column 4 lines 58 – 67, column 5 lines 1 – 10). Skardon fails to disclose data stored in anonymized form. However, Fey a reference in an analogous art of health screening and diagnosis discloses a networked medical database system that stores records in an anonymous manner (Fey paragraphs 0065, 0094). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Skardon with the anonymized medical records of Fey, since Fey states that storing records in an anonymous manner protects personal information from becoming public, and the user can benefit from medical advancements without endangering privacy (Fey paragraphs 0065).

Furthermore, Skardon fails to disclose selecting comparable data based on a user's medical history. However, Fey a reference in an analogous art of health screening and diagnosis discloses a networked health screening system that queries a database of a population for similar trends and results (Fey paragraphs 0025, 0065, 0094). It would have been obvious to one of

ordinary skill in the art at the time of invention to modify the diagnosis system of Skardon with the population database of Fey, since Fey states that having more current information available to the medical community provides leaps forward in preventative care and early intervention, and the population information can help better develop risk assessments (Fey paragraph 0094).

Finally, the inventions of Skardon and Fey disclose a system that collects patient data and medical history information which is then processed and compared to received allergen data to provide feedback and advice to a patient. Skardon and Fey fail to disclose assigning point values to medical history question answers, combining the point values, and providing the feedback and advice based on those weighted point values. However, Iliff a reference in an analogous art of medical diagnostic and device systems discloses providing multiple medical questions to a user, wherein the responses to the questions are weighted and scored, and the resulting combined score determines the feedback and advice presented to the user when compared to stored thresholds (Column 4 lines 52 – 67, column 5 lines 1 – 26, column 62 lines 61 – 67, column 63 lines 1 – 33). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the medical data and advice system of Skardon and Fey with the scoring and weighting system of Iliff, since Iliff teaches methods of improving patient medical advice and feedback (Column 3 lines 50 - 56, column 4 lines 16 – 36), and that weighting and scoring answers to medical questions helps to "tune" and increase the sensitivity of the feedback and advice system (Column 62 lines 61 – 67, column 63 lines 1 – 33).

9. A method according to Claim 1, wherein step g) includes the comparison of the obtained set of answers with other sets of answers which have been obtained from earlier anamneses (Fey paragraphs 0025, 0094).

10. A method according to Claim 1, wherein contraindications are recorded prior to the preparing of therapy proposals (Skardon column 11 lines 1 – 16).

18. A method according to Claim 1, wherein contraindications are recorded prior to the preparing of therapy proposals within the framework of d) (Skardon column 11 lines 1 – 16 discloses collecting medical data and allergen triggers before the generation of advice and feedback).

21. A method according to Claim 1, wherein the computer program has a scale valuation and combination of the scale valuations of individual answers for the analysis of the recorded data (Iliff column 4 lines 52 – 67, column 5 lines 1 – 26, column 62 lines 61 – 67, column 63 lines 1 – 33).

22. A method according to claim 1, which is performed or operated on a computer that is without connection to a practice management system (Skardon column 11 lines 36 – 50 discusses generating feedback based on comparisons to cached data. Since cached data is stored locally, the method would be performed without connection to an external system in this instance).

Claims 11, 14 - 17, and 23 are rejected by the system performing the method of Skardon in view of Fey, further in view of Iliff (see rejection above for citations to prior art).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kai Rajan whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kai Rajan/
Examiner, Art Unit 3769

/Henry M. Johnson, III/
Supervisory Patent Examiner, Art Unit 3769

November 20, 2009